RESERVED

COURT NO.3

Criminal Revision No.68 of 2002

Ramesh Chandra ……Revisionist.

Vs.

State of Uttaranchal and others ….Respondents.

….

Hon'ble Irshad Hussain, J:

Revisionist-husband has sought the intervention of the Court to invoke the powers of the revision under section 397 read with section 401 of the Code of Criminal Procedure (hereinafter in short 'Code') to have the judgment and order dated 06.07.2002 passed by the Principal Judge, Family Court, Dehradun in case no.93 of 2002, Ramesh Chandra Vs. Tara Devi and others set aside.

Brief facts of the case are that an application under section 125 of the Code preferred by respondent-wife Smt. Tara Devi against the revisionist-husband was allowed per judgment and order dated 01.11.1993 by the then Special Magistrate, C.B.I., Dehradun and the revisionist-husband was directed to pay maintenance allowance to his wife and six children at different rates. Alleging change of circumstances, application under section 127 of the Code was preferred by the revisionist-husband and the same was opposed by the respondent and after recording the evidence in the case, learned Principal Judge, Family Court, Dehradun dismissed the application by the impugned judgment and order dated 06.07.2002. Aggrieved by the said judgment and order, the revisionist-husband has preferred this revision.

Heard Sri Sri Ashok Agarwal, learned counsel for the revisionist and Sri N.C.Gupta, learned counsel for the respondents.

There can be no doubt that the provision of section 127 of the Code permits alteration in the allowances awarded under section 125 of the Code on proof of a change in the circumstances of any person receiving such allowance. The revisionist-husband has come up with the allegation that after the grant of maintenance allowance in the year 1993, change of circumstances had taken place in as much as out of the six children who were granted maintenance allowance, one had died and remaining others were residing with him and therefore, there was need to make an alteration in the order of maintenance allowance awarded to them by the learned Magistrate. Contention was also reaised that the respondent-wife was also not entitled to receive the maintenance allowance in view of her refusing to reside with him and perform her marital obligations. It is of significance that respondent-wife in her objections admitted that four of the children were now residing with the revisionist-husband in Delhi where they were also studying and only one of the minor daughter continued to reside with her while studying in Dehradun. As mentioned earlier the maintenance allowance by the order dated 11.11.1993 was allowed to the children besides the respondent-wife, but the admitted change of circumstances warranted alteration in the order and as permitted under law as mentioned above. Despite the undisputed fact about four children now residing with the revisionist-husband the learned Principal Judge, Family Court failed to take into account this aspect of the matter and on the basis of the evidence adduced in the case went on the record a finding that since there is no material on record telling

upon the alleged immoral character of respondent-wife and also adverse to her virtues as married woman, there appears to be no legal ground for alteration in the allowances as granted by the initial order under section 125 of the Code. In the face of the facts of the case I see no reason to reject the contention of the learned counsel for the revisionist that the learned Principal Judge, Family Court failed to take into account all the change of circumstances while deciding the matter, but merely acted fancifully on the basis of the moral virtues and unassailed character of a married woman, the respondent-wife in this case and that this has resulted in miscarriage of justice and the impugned order cannot be said to be just and reasonable. The same therefore cannot be maintained. Since the matter requires to be decided afresh after appreciation of the material and evidence on recird, the judgment and order has to be set aside and the case has to be sent back to the Court concerned for a decision afresh according to law and in the light of the material on record.

In view of the above, this revision succeeds and has to be allowed. The revision is allowed. Judgment and order dated 06.07.2002 is set aside. The case is sent back to the Principal Judge, Family Court. Dehradun who shall decide afresh the application under section 127 of the Code according to law preferably within a period of two months. The record of the case be sent to the court concerned at once.

(Irshad Hussain, J.)

10.03.2003.